



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

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WILLIAM M. TAM  
DEPUTY DIRECTOR

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

June 29, 2011  
Honolulu, Hawaii

Request to Authorize the Chairperson to Enter Into a  
Memorandum of Agreement for the Maintenance and Use of the  
Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well (State Well No. 2503-03)  
Island of Oahu

SUMMARY OF REQUEST

Staff is requesting that the Commission on Water Resource Management (CWRM) authorize the Chairperson to enter into a Memorandum of Agreement (MoA) for the maintenance and use of the Pearl Harbor (Ewa-Kunia Mauka 2) deep monitor well.

BACKGROUND

The Pearl Harbor (Ewa-Kunia Mauka 2) deep monitor well, State Well No. 2503-03, was drilled in 2004 by the CWRM to collect important hydrologic information to assess the sustainability and status of the Ewa-Kunia Aquifer System Area. The well resides on TMK (1) 9-2-004:001, which was owned by the Estate of James Campbell (Campbell Estate). An MoA was executed between Campbell Estate and CWRM, to allow the CWRM access for use and maintenance of the well (refer to Exhibit A).

Staff had collected data from this well on a quarterly basis but collection frequency has been reduced to a semi-annual basis because of budget constraints.

On January 23, 2008, Campbell Estate sold the parcel to Fat Law's Farms, Inc., Law Tieng's Farm, LLC, Tony Law, Manyone Law, Hae Viengkhou and Phouaugphet Viengkhou. Unfortunately, the MoA was never transferred or brought to the attention of the new landowner.

ISSUES

Recently, attorneys for Fat Law's Farms, Inc. et al. denied staff access to the well until an easement or new MoA is agreed to between Fat Law's Farms, Inc. et al. and the CWRM. Obtaining an easement for this well, along with recordation of the easement in the deed, would eliminate the need

to enter into future Memorandums of Agreement should the land be sold in the future. Staff has been working with the State Attorney General's office to obtain this easement. However, the process may take several months, and in the meantime, the landowners' attorney has requested that the staff enter into a new Memorandum of Agreement to allow staff access to the well.

A copy of the proposed Memorandum of Agreement is attached as Exhibit B. The conditions of this agreement are identical to the Memorandum of Agreement that was executed between CWRM and Campbell Estate.

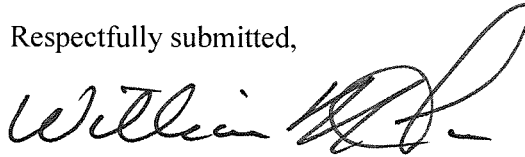
RECOMMENDATIONS

Staff recommends that the Commission:

1. Authorize the Chairperson to enter into a Memorandum of Agreement with Fat law's Farms, Inc., Law Tieng's Farm, LLC, Tony Law, Manyvone Law, Hae Viengkhou and Phouaugphet Viengkhou, attached as Exhibit B.
2. Authorize the Chairperson to further amend or modify this agreement.

The terms of this agreement will be subject to the approval of the Chairperson and the Department's Deputy Attorney General.

Respectfully submitted,



WILLIAM M. TAM  
Deputy Director

Exhibit:        1 Previous Memorandum of Agreement  
                    2 Proposed Memorandum of Agreement

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.  
Chairperson

Agreement No. A02007500

2503-03

MEMORANDUM OF AGREEMENT  
FOR THE  
INSTALLATION, MAINTENANCE, AND USE OF THE  
PEARL HARBOR (EWA-KUNIA MAUKA 2) DEEP MONITOR WELL  
ISLAND OF OAHU

Parties:

C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities, hereinafter referred to as the "LANDOWNER", and the State of Hawaii, Commission on Water Resource Management, hereinafter referred to as the "OPERATOR", agree on the "Joint Understanding" set forth below and agree to fulfill the undertakings specified herein.

RECITALS

WHEREAS, the purpose of this program is to provide for collection of ground water and other hydrologic data at various locations throughout the State to increase the knowledge and understanding of Hawaii's ground water resources and to aid in the management of this resource; and

WHEREAS, the LANDOWNER would like to have access to hydrologic and ground water data collected on the Ewa-Kunia Aquifer System of the Pearl Harbor Sector aid in planning for future agricultural uses and/or development of their lands located in the Ewa-Kunia Aquifer System area; and

WHEREAS, the LANDOWNER would also like to support the State in collecting ground water and hydrologic data for the State of Hawaii; and

WHEREAS, the program, to which this Memorandum of Agreement (MOA) applies, is part of the larger data collection program throughout the State and shall be known as the Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well Program; and

WHEREAS, under the Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well Program, the OPERATOR would like to install a deep monitor well and appurtenant equipment to monitor the Ewa-Kunia Aquifer System of the Pearl Harbor Sector.

NOW THEREFORE, the parties agree as follows:

- A. The LANDOWNER hereby consents and agrees to the OPERATOR's drilling, installation, maintenance and exclusive use of a deep monitor

well and appurtenant monitoring equipment on the parcel of land identified as Tax Map Key (TMK): (1) 9-2-04: Portion of 1.

The LANDOWNER also consents and agrees to the OPERATOR's use of the access road shown in Exhibit 1 to access the monitoring well site. The LANDOWNER reserves the right to redirect access from time to time.

The OPERATOR designated that the State of Hawaii, Engineering Division (ED), administer the preparation of contract plans and specifications, prepare and process applicable permits and approvals, advertise the project for bids, and perform the contract and construction administration.

The OPERATOR shall provide the LANDOWNER with hydrologic and ground water data collected on the Ewa-Kunia Aquifer System of the Pearl Harbor Sector.

- B. The LANDOWNER grants to the OPERATOR the right of entry, and ingress to and egress from the specified property to drill, install, maintain, and use said deep monitor well and appurtenant monitoring equipment during normal working hours. A contractor chosen by the OPERATOR shall conduct the actual drilling and installation of the well. Although the OPERATOR is being given the right of entry for these purposes, the contractor chosen to do the actual work is required to obtain a separate right of entry from the LANDOWNER solely for the purpose of drilling the deep monitor well, installation of well casing, and all other equipment necessary or desirable for operation and maintenance of a well, and the storage of all machinery, materials and equipment.

The LANDOWNER shall also grant to the ED the right of entry and access to the well site for the sole purpose of inspecting the drilling of the deep monitor well and for no other purposes. The ED acknowledges that the purpose of this right of entry and access is for passive observation by ED of activities of others, each of whom must have separate authorization from the LANDOWNER for right of entry and access to the monitoring well site.

- C. The OPERATOR and ED hereby consents and agrees to abide by the LANDOWNER's rules, regulations, and policies concerning security during right of entry, and ingress to and egress from the monitoring well site, as promulgated by the LANDOWNER from time to time upon approval of the OPERATOR.

- D. Under normal conditions, hydrologic and ground water data will be collected on a quarterly schedule, however, should the analyses of such data warrant additional monitoring, the frequency of data collection may need to be increased from time to time.

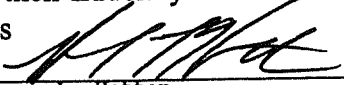
Two (2) copies of the hydrologic and ground water data collected shall be submitted to the LANDOWNER.

- E. The deep monitor well shall consist of a partially cased drilled hole (see Exhibit 2) constructed in accordance with the Hawaii Well Construction and Pump Installation Standards, and shall be used for the sole purpose of obtaining geologic, hydrologic and ground water data.
- F. The deep monitor well and appurtenant monitoring equipment that may be sheltered or otherwise protected from the weather shall be located on the said property of the LANDOWNER as shown in Exhibit 1.
- G. The deep monitor well and appurtenances shall be constructed, installed and maintained in a diligent and workmanlike manner at no cost to the LANDOWNER.
- H. The deep monitor well and appurtenant equipment within said property shall remain the property of the OPERATOR and shall be removed, filled and plugged by the OPERATOR at its own cost and expense within a reasonable time after termination of this agreement. The OPERATOR shall thereupon restore said property as near as possible to its original condition.
- I. The LANDOWNER shall not be liable for the following, unless the following are caused by the gross negligence or intentional act of the LANDOWNER:
1. Any damages or injury brought about by the use of property or appurtenant equipment by the OPERATOR
  2. Any contamination to the groundwater from the well.
- J. This MOA shall be effective upon signature by both parties and shall remain in force as long as the well is in operation, unless earlier terminated by the OPERATOR. The OPERATOR shall provide a written notice of termination by certified mail to the LANDOWNER of its intent to either cease operation of the well or to terminate this agreement. Said

notice shall be provided not less than 90 days in advance of the cessation of operation of the well or termination of this agreement.

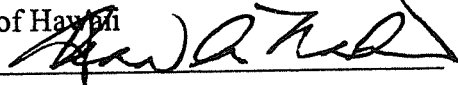
- K. Each party shall be responsible for ensuring that the provisions of this MOA are in accord with its program requirements. Either party to this MOA may request amendments by letter to signatories of this agreement and such amendments shall take effect upon the consent of all parties.

LANDOWNER: THE TRUSTEES UNDER THE WILL AND  
OF THE ESTATE OF JAMES CAMPBELL, DECEASED,  
acting in their fiduciary and not in their individual  
capacities

By   
Its Bertram L. Hatton  
Executive VP, Hawaii Land Management

By \_\_\_\_\_  
Its \_\_\_\_\_

OPERATOR: Commission on Water Resource Management  
State of Hawaii

By:   
Title: \_\_\_\_\_

Date: 5/19/05

Approved as to Form:   
Deputy Attorney General

Date: 5/12/05

MEMORANDUM OF AGREEMENT  
FOR THE MAINTENANCE AND USE OF THE  
PEARL HARBOR (EWA-KUNIA MAUKA 2) DEEP MONITOR WELL  
(STATE WELL NO. 2503-03)  
ISLAND OF OAHU

This Memorandum of Agreement (MOA) made on \_\_\_\_\_, by and between Fat law's Farms, Inc., Law Tieng's Farm, LLC, Tony Law, Manyvone Law, Hae Viengkhou and Phouaugphet Viengkhou, hereinafter referred to as "LANDOWNER", and the State of Hawaii Commission on Water Resource Management, hereinafter referred to as "OPERATOR", agree on the "Joint Understanding" set forth below and agree to fulfill the undertakings specified herein.

RECITALS

WHEREAS, the OPERATOR maintains a program to provide for collection of ground water and other hydrologic data at various locations throughout the State to increase the knowledge and understanding of Hawaii's ground water resources and to aid in the management of this resource; and

WHEREAS, the LANDOWNER would like to support the State in collecting ground water and hydrologic data for the State of Hawaii; and

WHEREAS, the program, to which this Memorandum of Agreement (MOA) applies, is part of the larger data collection program throughout the State and shall be known as the Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well Program; and

WHEREAS, pursuant to the program, the OPERATOR has previously drilled, installed, maintained and used a deep monitor well and appurtenant monitoring equipment on the parcel of land identified as Tax Map Key (TMK) (1) 9-2-004:010, with the consent and agreement of former landowners C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, H AND RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, and

WHEREAS, the parcel of land identified as TMK: (1) 9-2-004:010 has since been conveyed to the LANDOWNER; and

WHEREAS, under the Pearl Harbor Ewa-Kunia Mauka 2) Deep Monitor Well Program, the OPERATOR would like to monitor the Ewa-Kunia Aquifer System of the Pearl Harbor Sector.

NOW THEREFORE, the parties agree as follows:

- A. The LANDOWNER hereby consents and agrees to the OPERATOR's maintenance and exclusive use of a deep monitor well and appurtenant monitoring equipment on the parcel of land identified as Tax Map Key (TMK): (1) 9-2-004:010.

The LANDOWNER also consents and agrees to the OPERATOR's non-exclusive use of the access road shown in Exhibit 1, for vehicular and pedestrian access to the monitoring well site during normal working hours. The LANDOWNER reserves the right to redirect access from time to time. The OPERATOR acknowledges that the LANDOWNER and other persons have rights to use the access road and that other persons may have rights to use the access road in the future. The OPERATOR agrees to coordinate its use of road with any other person having the right to use the access road. The LANDOWNER shall not have any obligation to maintain the access road or improvements within the access road in good order, condition, maintenance and/or repair.

- B. Unless caused intentionally or by gross negligence of the LANDOWNER, the OPERATOR further agrees to waive, release and forever discharge the LANDOWNER, and each and every one of its affiliates, subsidiaries, officers, directors, employees, agents, servants, attorneys, tenants, lessees and persons employed or engaged by them, as well as their respective heirs, personal representatives, successors and assigns of and from any and all actions and causes or actions, suits, claims, liabilities, damages arising from the OPERATOR's use of the parcel of land identified as TMK: (1) 9-2-004:010, the deep monitor well and appurtenant monitoring equipment on the parcel of land identified as TMK: (1) 9-2-004:010, and any contamination to the groundwater from the deep monitor well.

The OPERATOR further agrees, for the consideration set forth in Paragraph A above, to indemnify, forever hold harmless, and defend the LANDOWNER from and against any and all claims, actions, damages, liabilities, expenses, including attorneys fees and costs, except where caused intentionally or by gross negligence of the LANDOWNER, in connection with loss of life, personal injury, damage to property, and/or any contamination to groundwater arising from or out of:

1. The use of the parcel of land identified as TMK: (1)9-2-004:010 by the OPERATOR of any of its guests, invitees, employees, agents, servants, attorneys, and persons employed or engaged by them, as well as their respective heirs, personal representatives, successors, and assigns; and
  2. The deep monitor well and appurtenant monitoring equipment on the parcel of land identified as TML: (1) 9-2-004:010.
- C. The LANDOWNER grants to the OPERATOR the right on entry, and ingress to and egress from the specified property to maintain and use deep monitor well and appurtenant monitoring equipment during normal working hours.
- D. The OPERATOR hereby consents and agrees to abide by the LANDOWNER's rules, regulations, and policies concerning security during right of entry and ingress to and egress from the monitoring well site, as promulgated by the LANDOWNER from time to time upon approval of the OPERATOR.
- E. Under normal conditions, hydrologic and ground water data will be collected on a quarterly schedule, however, should the analyses of such data warrant additional monitoring, the frequency of data collection may need to be increased from time to time.
- F. The deep monitor well shall consist of a partially cased drilled hole (see Exhibit 2) constructed in accordance with the Hawaii Well Construction and Pump Installation Standards , and shall be used for the sole purpose of obtaining geologic, hydrologic and ground water data.
- G. The deep monitor well and appurtenant monitoring equipment that may be sheltered or otherwise protected from the weather shall be located on the said property of the LANDOWNER as shown in Exhibit 1. The ground surface area of the deep monitor well, appurtenant monitoring equipment, and shelter or other protection shall not be relocated from its current footprint, and shall not exceed the current dimensions of ten (10) feet by thirty (30) feet, and shall be maintained by the OPERATOR in good order, condition, maintenance and repair, including but not limited to the maintenance of the vegetation in the area of the shelter or other protection below twelve (12) inches measured from the ground surface.



- H. The deep monitor well and appurtenances shall be maintained in a diligent and workmanlike manner at no cost to the LANDOWNER.
- I. The deep monitor well and appurtenant equipment within said property shall remain the property of the OPERATOR and shall be removed, filled and plugged by the OPERATOR at its own cost and expense within a reasonable time after termination of this agreement. The OPERATOR shall thereupon restore said property as near as possible to its original condition.
- J. The LANDOWNER shall not be liable for the following, unless the following are caused by the gross negligence or intentional act of the LANDOWNER:
  - 1. Any damages or injury brought about by the use of property or appurtenant equipment by the OPERATOR
  - 2. Any contamination to the groundwater from the well.
- K. This MOA shall be effective upon signature by both parties and shall remain in force as long as the well is in operation, unless earlier terminated by the OPERATOR. The OPERATOR shall provide a written notice of termination by certified mail to the LANDOWNER of its intent to either cease operation of the well or to terminate this agreement. Said notice shall be provided not less than 90 days in advance of the cessation of operation of the well or termination of this agreement.
- L. Each party shall be responsible for ensuring that the provisions of this MOA are in accord with its program requirements. Either party to this MOA may request amendments by letter to signatories of this agreement and such amendments shall take effect upon the consent of all parties.